

Various Repair Provisions in California State Laws and Regulations:

Excerpt from the 2007 California Building Code – Potentially onerous and subject to a variety of interpretations, lacks discretion for the typically wide variety of repairs:

3403.2 Where repairs are made to structural elements of an existing building, and uncovered structural elements are found to be unsound or otherwise structurally deficient, such elements shall be made to conform to the requirements for new structures.

Excerpt from State Regulations for Public Schools – Fire Specific provision violates Criteria 4 “applies uniformly” of 44CFR206.226(d):

4-309. Fire damage repair may be accomplished utilizing the approved plans and specifications for the original construction work.

Excerpt from State Regulations for Hospitals – Earthquake-specific, lower threshold provisions violates Criteria 4 “applies uniformly” of 44CFR206.226(d):

7-302. Where the lateral load resisting capacity of the building at any level is reduced by more than 10 percent due to earthquake damage, the repairs may be made such that the primary structural system and the seismic bracing of other components and systems shall conform to the requirements of Section 1635B.3.2.3 of the CBC.

Excerpts from State Housing Law – Allows alterations and repairs that use existing, noncomplying materials and methods according to codes in effect at the time of original construction, this can conflict with CBC 3403.2, so it could violate Criteria 4 “applies uniformly” of 44CFR206.226(d):

17958.8. Local ordinances or regulations governing alterations and repair of existing buildings shall permit the replacement, retention, and extension of original materials and the use of original methods of construction for any building or accessory structure subject to this part, including a hotel, lodginghouse, motel, apartment house, or dwelling, or portions thereof, as long as the portion of the building and structure subject to the replacement, retention, or extension of original materials and the use of original methods of construction complies with the building **code** provisions governing that portion of the building or accessory structure at the time of construction, and the other rules and regulations of the department or alternative local standards governing that portion at the time of its construction and adopted pursuant to Section 13143.2 and the building or accessory structure does not become or continue to be a substandard building.

Excerpts from State Housing Law – Unique Procedures for Substandard and Potentially Hazardous Housing could violate Criteria 4 “applies uniformly” of 44CFR206.226(d):

HEALTH AND SAFETY CODE

17980.

(b) (1) Whenever the enforcement agency has inspected or caused to be inspected any building and has determined that the building is a substandard building or a building described in Section 17920.10, the enforcement agency shall commence proceedings to abate the violation by repair, rehabilitation, vacation, or demolition of the building.

The enforcement agency shall not require the vacating of a residential building unless it concurrently requires expeditious demolition or repair to comply with this part, the building standards published in the California Building Standards Code, or other rules and regulations adopted pursuant to this part. The owner shall have the choice of repairing or demolishing. However, if the owner chooses to repair, the enforcement agency shall require that the building be brought into compliance according to a reasonable and feasible schedule for expeditious repair. The enforcement agency may require vacation and demolition or may itself vacate the building, repair, demolish, or institute any other appropriate action or proceeding, if any of the following occur:

(A) The repair work is not done within the period required by the notice.

(B) The owner does not make a timely choice of repair or demolition.

(C) The owner selects an option which cannot be completed within a reasonable period of time, as determined by the enforcement agency, for any reason, including, but not limited to, an outstanding judicial or administrative order.

(2) In deciding whether to require vacation of the building or to repair as necessary, the enforcement agency shall give preference to the repair of the building whenever it is economically feasible to do so without having to repair more than 75 percent of the dwelling, as determined by the enforcement agency, and shall give full consideration to the needs for housing as expressed in the local jurisdiction's housing element.

17980.1. (a) If a building is identified by a city, city and county, or county pursuant to Article 4 (commencing with Section 19160) of Chapter 2 of Part 3 of Division 13, or Section 8875.2 of the Government Code as being potentially hazardous to life in the event of an earthquake or is identified for any other reason to be hazardous to life in the event of an earthquake, or is identified as

being in a condition that substantially endangers the health and safety of residents pursuant to Section 17980.6, an order requiring the building to be retrofitted to local seismic building standards or repaired so as not to violate any law, regulation, or ordinance applicable to the maintenance and use of the building, may be executed by the enforcement agency or its agents or contractors if all of the following conditions are satisfied:

(1) The hazardous condition is of a nature that would endanger the immediate health and safety of residents or the public in the event of an earthquake.

(2) The extent and nature of a hazardous condition related to seismic safety is such that it could be corrected with the application of current technology.

(3) Any abatement order of the enforcement agency is not complied with or not so far complied with as the enforcement agency may regard as reasonable, within the time therein designated.

(b) If the owner does not comply with the abatement order within a reasonable time after issuance of the order, the enforcement agency may, as an alternative to any other remedy permitted under law, seek the remedy provided by this section if the court finds the owner in violation of the abatement order and finds that the abatement order was issued in order to correct a hazardous condition which would endanger the immediate health and safety of residents or the public in the event of an earthquake or because of any violation of this part.

(c) After serving notice upon the owner not less than 48 hours prior to the filing of the application in accordance with the procedures for notice specified by this subdivision, the enforcement agency, in accordance with this section, Sections 17980.1 to 17980.3, inclusive, and Chapter 5 (commencing with Section 564) of Title 7 of Part 2 of the Code of Civil Procedure, may thereafter apply to the superior court in the county where the property is situated by petition for an order directing the owner and any mortgagees or lienors of record to show cause why an individual or group as proposed by the enforcement agency should not be appointed as a receiver, and why the receiver should not remove or remedy the condition and obtain a lien, as provided in Section 17980.2, in favor of the enforcement agency against the property, with the lien having the priority as specified in subdivision (b) of Section 17980.2, to secure repayment of the costs incurred by the receiver in removing or remedying the condition. The application shall contain all of the following:

(1) Proof by affidavit that an abatement order of the enforcement agency has been issued and served on the owner, mortgagees, and

lienors in accordance with this section, and that the notice containing the same particulars as are required in the abatement order, including the work to be done, has been filed in the office of the county recorder in which mechanic's liens affecting the property would be filed.

(2) A statement that the abatement order has not been complied with or not so far complied with as the enforcement agency may regard as reasonable within the time period therein designated.

(3) A statement that a condition that constitutes a serious hazard and is a serious threat to life, health, or safety continues to exist upon the property, and a description of the property and the factors constituting the unsafe condition.

(4) A plan describing how the receiver shall perform the required work, and how rents, issues, and profits shall be collected and distributed among the owner, mortgagee, lienor, and enforcement agency or receiver, and including an estimate as to the costs of the required work, the approximate time when the repairs will be completed, a statement as to whether a displacement of any occupant is required, and provisions regarding assistance for displaced occupants.

(d) The order to show cause shall be returnable not less than five days after service is completed and shall provide for personal service of a copy thereof and the papers on which it is based on the owners and mortgagees of record and lienors. Alternative service may be made upon the owner by posting upon the property and thereafter mailing to the owner at the last known address, and upon the mortgagee or lienor by mailing to the address set forth in the recorded mortgage or lien and by publication in a newspaper of general circulation in the county where the premises are located. The service shall be completed on filing proof of service thereof in the office of the county clerk.

(e) On the return of the order to show cause, the proceeding regarding that order shall have precedence over every other business of the court, unless the court finds that some other pending proceeding, having a similar statutory precedence, shall have priority. If the court finds good cause therefor, and finds that the cost of repairs, when added to any valid encumbrances on the building, shall not exceed the projected value of the building when repaired, then the court shall appoint a receiver named in the application or another person deemed appropriate, in accordance with this section and Section 17980.2. However, prior to the appointment of a receiver, if the owner or any mortgagee or lienor or other person having an interest in the property applies to the court to be permitted to remove or remedy the conditions, and demonstrates the

ability promptly to undertake the work required, and posts security for the performance thereof within the time, and in the amount and manner deemed necessary by the court, then the court may, in lieu of appointing the receiver, issue an order permitting that person to perform the work within a time fixed by the court.

(f) If the conditions have not been satisfactorily remedied or removed within the time fixed in the abatement order, then the court shall appoint a receiver. If, after granting a court order permitting a person to perform the work, but before the time fixed by the court for the completion thereof, it appears to the enforcement agency that the person permitted to do the work is not proceeding in a timely fashion, the enforcement agency may petition the court for a hearing to determine whether a receiver should be appointed immediately. On the failure of the owner, mortgagee, lienor, or other person having an interest in the property to complete the work in accordance with the provisions of the order, the costs of the receiver thereafter appointed in removing or remedying the condition, and for other charges herein provided for, shall be reimbursed, paid, or made subject to a lien pursuant to Section 17980.2, or any combination of these.